* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 14th September, 2021**

\+ **CM (M) 447/2021, CM APPLs.20990/2021 (by the petitioners u/S 151 CPC for ad-interim stay) & 20991/2021 (by the petitioners u/S 151 CPC for directions for calling the entire Trial Court Record)**

M/S NEW INDIA MOTORS (NEW DELHI) PVT LTD. & ORS.
.....Petitioners
Through: Mr. Ajay Kohli and Ms. Saloni Jain, Advocates

Versus

M/S NORTHERN INDIA IRON AND STEEL CO. LTD. & ANR.
.....Respondents
Through: Mr. Manish Vashisht, Senior Advocate with Mr. Rikky Gupta, Mr. Manashwy Jha, Ms. Urvi Kapoor, Ms. Sanjana Nangia, Advocates for R-1

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. This petition has been filed under Article 227 of the Constitution of India seeking quashing/setting aside of the judgment of the learned Rent Control Tribunal ("**RCT**", for short) dated 12th February, 2021, passed in RCT No.24/2018 and the judgment of the learned Additional Rent Controller ("**ARC**", for short) dated 8th June, 2018, passed in E-No.24/2008.

2. It may be noticed that cross-objections had been filed by the present respondent No.1 (M/s.Northern India Iron And Steel Co. Ltd.) when the appeal was filed by the present petitioners before the learned RCT, and the cross-objections have also been disposed of vide the impugned order dated 12th February, 2021. However, no petition has been filed by the respondent No.1 against that part of the impugned order.

3. The facts, as are relevant for the disposal of the present petition, are that the respondent No.1 herein is the owner and landlord of the premises bearing No.10-B, Scindia House (bearing Municipal No.13), Connaught Place, New Delhi, having purchased the same vide Sale Deed 31st May, 1986 from its erstwhile owners, namely, M/s.Atma Ram Properties Pvt. Ltd.. M/s. New India Motors (New Delhi) Private Limited i.e., the petitioner No.1 herein, was already a tenant in the premises at that time, having been inducted by the previous landlords, namely, Sardar Kushwant Singh and Brig. Gurbux Singh, vide Lease Deed dated 24th February, 1971.

4. The respondent No.1 had filed an eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 ("**DRC Act**", for short) against the petitioners on grounds of the petitioner No.1 having sublet the premises to the co-petitioners. It was alleged that the premises had also been sublet to the respondent No.2. The learned ARC came to the finding that the premises had been sublet by the petitioner No.1 herein to the petitioners No.2 & 3 herein, and ordered eviction. Qua the respondent No.2 herein i.e., M/s. East West Agencies, the learned ARC held that the decision in a previous eviction petition filed by the petitioner No.1

against the respondent No.2, which had been dismissed by the then RCT, operated as res-judicata qua the ground of subletting.

5. The learned RCT vide its judgment dated 12th February, 2021 upheld the decision of the learned ARC that the petitioner No.1 had sublet the premises to the petitioners No.2 & 3. Since there was a finding by the competent Civil Court that the premises in dispute had been sublet by the petitioner No.1 to the respondent No.2, against which RFA No.319/2008 was pending before the High Court, it set aside that part of the finding of the learned ARC dismissing the petition on principles of res-judicata. However, it chose to adjourn the cross-objections bearing RCT No.37/2018 *sine die* to await the decision of the High Court in RFA No.319/2008.

6. Mr. Ajay Kohli, learned counsel for the petitioners, submitted that the conclusions of the learned ARC as well as the learned RCT were erroneous inasmuch as the original landlord had, while executing the Lease-Deed dated 24th February, 1971, permitted K.C. Jain and Sons to carry on their business from the demised premises. It was submitted that Sh.Pawan Sagar Jain is the MD of the three petitioners/Companies and was a member of the family of Sh.K.C. Jain and thus, had been permitted to run any business from the premises. It was submitted that subletting entails the effacement of the tenant from the control over and possession of the tenanted premises. However, in the present case, when Sh.Pawan Sagar Jain, being a member of the K.C. Jain Family, was in full control of all the three petitioners/Companies, and the petitioner No.1 had not been effaced, and through its MD Sh.Pawan Sagar Jain and its employees, was

still in full control of the premises, it could not be said that there has been subletting.

7. It was argued that there was no necessity for the learned RCT to have gone into the question of whether the petitioner No.1 was a defunct company. In any case, that conclusion was also incorrect on the evidence brought on record. The Auditor's report had been produced by the petitioners, which showed that the petitioner No.1 was not a loss making company. Only because the petitioner No.1 was not making huge profits, but was only a low profit making venture, was no reason to conclude that the petitioner No.1/Company had been effaced from the premises. The health of the business of the tenant is not a factor relevant to establish continuance of possession. Attention of this Court was drawn to Annexure P-21, the Auditor's Report, which reflected that salaries and rent were being paid and profits were also slowly increasing. Thus, the petitioner No.1 was in full possession of the demised premises.

8. According to learned counsel for the petitioners, ***Singer India Ltd. v. Chander Mohan Chadha*** (2004) 7 SCC 1 was wrongly applied to the facts of the present case. Here, tenancy rights had not been transferred to anyone, unlike in ***Singer India (supra)***. The petitioner No.1 had not lost its identity nor had ceased to have any business in its name. Moreover, the employees of the petitioner No.1 were found at the spot even as per the Local Commissioner's Report, which had been submitted in the previous litigation between the erstwhile Landlord and the present petitioner No.1, in which matter the petitioner No.1 was sought to be evicted on grounds of subletting of the premises to the present respondent No.2, and which fact has been recorded by the then learned RCT in its

judgment dated 4th August, 1979 in R.C.A.No.220/1976 (Annexure P-12 at page No.338 of the E-file). Hence, it was submitted that the present petition be allowed and the impugned judgments set aside.

9. Learned counsel for the petitioners has relied on ***State of Maharashtra v. Milind & Ors.*** 2001(1) SCC 4, ***Rajinder Parsad Singhal v. Sharda Devi*** in CM(M) 216/2019 [Order dated 5th May, 2020], ***Nawal Kishore v. Mohd. Yakub*** in CM(M) 1256/2012 [Order dated 24th August, 2017] and ***Jasbir Singh v. Manjit Kaur & Ors.*** CM(M) 1041/2011 [Order dated 20th November, 2013], ***Madras Bangalore Transport Co. (West) v. Inder Singh and Ors.,*** (1986) 3 SCC 62, ***Reliable Finance Corpn. (P) Ltd. v. Clearing House and Agencies (P) Ltd.,*** 1984 SCC OnLine Del 146, ***Dipak Banerjee v. Lilabati Chakraborty***, (1987) 4 SCC 161, ***Vishwanath v. Chaman Lal Khanna***, 1975 SCC OnLine Del 51, ***Niranjan Lal Kanodia v. Harbans Lal***, 1995 SCC OnLine Del 273 and ***Jagan Nath v. Chander Bhan and Ors.***, (1988) 3 SCC 57.

10. Mr. Manish Vashisht, learned senior counsel appearing on behalf of the respondent No.1, on the other hand, submitted that against concurrent findings of facts, the present petition was not maintainable. It was submitted that even if subletting had been permitted to K.C. Jain and Sons, it could not be extended to other entities created by them. Moreover, the petitioners No.2 & 3 were not created and established by K.C. Jain and Sons, but were the companies in which Pawan Sagar Jain was the Director/majority shareholder. They were inducted in the premises without any intimation to the landlord. It was submitted that merely because the Managing Director, Pawan Sagar Jain, was common to all the concerns, would not make them the same legal entity. Reliance

has been placed by the learned senior counsel for the respondent No.1 on ***V. Kandasamy v. C. Kandasamy***, 2005 SCC OnLine Mad 460.

11. Learned senior counsel further contended that the profit, which the petitioner No.1 was claiming, was actually, the rent paid by the petitioners No.2 & 3 to petitioner No.1. This also clearly established that the demised premises had been sublet. It was submitted by the learned senior counsel for the respondent No.1 that in the absence of any error or perversity in the judgments or the exercise of powers without jurisdiction, or the over-looking of evidence or admission of evidence erroneously, the present petition was liable to be dismissed. Reliance has also been placed on ***Chandavrkar Sita Ratna Rao v. Ashalata S. Guran*** 1986 (4) SCC 447, ***Puran Chand v. Raj Kumar***, 2015 SCC OnLine Del 13743, ***Indowind Energy Ltd. v. Wescare (India) Ltd. & Anr.*** 2010 (5) SCC 306, ***V. Subramaniam v. Rajesh Raghuvandra Rao*** 2009 (5) SCC 608, ***Balwant Rai Saluja & Anr. v. AIR India Ltd. & Ors.*** 2014 (9) SCC 407, ***Prem Prakash v. Santosh Kumar Jain & Sons*** 2018 (12) SCC 637 and ***Surender Singh Chadha v. Subhash Chand Saini*** 2020 (266) DLT 316.

12. It is trite that the court does not sit as a court of appeal while exercising its powers under Article 227 of the Constitution of India. The court is not required to go into the questions which depend on appreciation of evidence, even when two conclusions were possible. It has been opined by the Supreme Court in ***Chandavrkar Sita Ratna (supra)*** that even in preferring one view to another on factual appreciation of evidence, the limit of the jurisdiction under Article 227 of the Constitution of India would be transgressed. Only if there is misdirection in law, or a view or fact taken is in the teeth of

preponderance of evidence and the finding was so perverse and not based on any material evidence or has resulted in manifest injustice, would the court, while exercising its jurisdiction under Article 227 of the Constitution of India, go into the questions of facts or re-appreciate evidence. If there is evidence on record on the basis of which the findings could be arrived at, then the findings cannot be interfered with. Findings of facts ought not to be interfered with in proceedings, such as these, as that would result in the conversion of the petition into an appeal. In case the courts below had exceeded their jurisdiction and authority, the court in the exercise of its supervisory power under Article 227 of the Constitution of India would no doubt interfere. The court would also interfere when a finding of the courts below was based upon exclusion of some admissible evidence or consideration of some inadmissible evidence.

13. Now, it is to be noticed that the question of subletting is to be answered on facts. Both the courts below have returned a finding of fact based on material placed before them that the premises have been sublet by the petitioner No.1 to petitioners No. 2 & 3.

14. Learned counsel for the petitioners relying on ***Rajinder Parsad Singhal (supra)***, ***State of Maharashtra (supra)*** and ***Nawal Kishore (supra)*** submitted that in the present case, since the learned RCT and the learned ARC had wrongly appreciated the evidence, which has resulted in manifest injustice being done to the petitioners, this court was required to look into the fact situation. Thus, the learned counsel for the petitioners has urged this court to re-look into the evidence, particularly, the Accounts and the Annual Returns of the petitioner No.1, and to reverse

the findings that the petitioner No.1 was a defunct company and had not effaced its existence.

15. In ***Madras Bangalore Transport Co. (supra),*** the limited company and the partnership firm were different only in name, but for all practical purposes, there was substantial identity between the two and it was in that light that the Supreme Court concluded that there was no sub-letting or assignment. In the present case, admittedly, the petitioner No.1 is different from the petitioners No.2 & 3. What is claimed here is that there was commonality of the Director/Managing Director/shareholder, namely, Pawan Sagar Jain in respect of all three petitioners. Since the time of ***Solomon v. Solomon***, (1897) A.C. 22, [1896] UKHL 1, the position in law has not changed, namely, that the company is a legal and separate entity from the shareholders. So, even if Pawan Sagar Jain was a shareholder in all three companies and was their Director/Managing Director, he cannot be equated to the petitioners.

16. This was reiterated by the Supreme Court in ***Indowind Energy (supra)***, where it was observed that two companies are separate and distinct legal entities and the mere fact that they have common shareholders or common Board of Directors, will not make them a single entity. Moreover, the shareholders of the company cannot become co-owners of the property of the company. Therefore, a tenancy right, being the property of the petitioner No.1, cannot become the property of Pawan Sagar Jain. The petitioners cannot, therefore, claim that the tenancy rights have not been transferred.

17. The submission of the learned senior counsel for the respondent No.1 has some force that the '*piercing of the corporate veil'* is intended

to avoid impropriety and wrongdoing or misuse. Here the tenant is requiring the court to pierce the veil in order that it becomes evident that there is commonality of shareholders amongst the petitioners and thus draw a conclusion that there is no subletting. In the present case, even if it is accepted that Sh.Pawan Sagar Jain is a common shareholder and Director/Managing Director of the three petitioners/Companies, as noticed hereinabove, his presence does not unify the separate legal identity and existence of the three petitioners/Companies.

18. It is in this context that the contention of the petitioners that the petitioner No.1 was still a working company, was raised, and the learned RCT considered the material placed on the record to conclude that petitioner No.1 was a defunct company. The learned counsel for the petitioners may be right in saying that financial health or the business acumen of the tenant is not relevant in a landlord-tenant relationship. But, it had become relevant only because petitioner No.1 claimed it was working from the tenanted premises. The learned RCT went into the Accounts and other documents placed on the record in order to consider the contention of both sides, one claiming to be in full control of the petitioner No.1 and so of the tenanted premises, and the other refuting it. The learned ARC looked into the documents and evidence placed before it to understand whether the petitioners have been able to establish their stand that the petitioner No.1 was the agent of the petitioners No.2 & 3. While observing that the petitioners have failed to prove their defence, neither the learned ARC nor the learned RCT has wrongly placed the onus on the petitioners. It has not been pointed out to this court as to

which document has been overlooked by the learned courts below or which one wrongly relied upon.

19. In order to ascertain whether the legal possession remained with the tenant, i.e. the petitioner No.1, and in order to evaluate the plea taken by the petitioners that petitioner No.1 was the agent of the petitioners No.2 & 3, the learned ARC and the learned RCT both considered the evidence and documents produced by the parties, particularly, the petitioners. The learned ARC noted that there was no documentary evidence to show the relationship of a "principal" and "agent" between the petitioners. It was the appellant No.1, who asserted that it was a functional company. To determine this question, the learned RCT looked into the turnover and rightly observed that only paltry sums were indicated as profits of the company in the Auditor's report for the year 2000-01. The fixed assets from 2000 to 2011 were also considered. They showed depreciated value of furniture from Rs.1,406/- to Rs.156/-. It is in this background that it was concluded that the original tenant M/s. New India Motors (New Delhi) Private Limited seems to be totally dysfunctional and therefore, seems to have effaced itself from the premises in dispute.

20. This Court does not find that this conclusion is tainted with error. The learned RCT has neither overlooked material evidence nor considered extraneous material to come to the conclusion. The question before the courts below was not on the profitability of the tenants' business and no comment has been made thereon. But a thriving concern would have better business to show and not a depreciating value of fixed assets over a period of a decade and that too, while being located in prime

commercial area. The inferences that if the tenant is not effectively working from the premises, but the other two companies are, it means that the tenant has stopped its business and has allowed other legal entities to function therefrom. Therefore, this Court does not find anything amiss in the observations of the learned RCT that the petitioner No.1 is in fact a defunct company and that the premises are in actual use and control of the petitioners No.2 & 3.

21. This Court finds no force in the contention of the learned counsel for the petitioners that the learned ARC had wrongly shifted the burden of proof on the petitioners. There is no dispute at all that the premises were let out to the petitioner No.1 and not to Mr. K.C. Jain. Liberty was given to K.C. Jain and Sons to carry on their business. However, M/s. Bel Air Travel & Cargo Pvt. Ltd. (petitioner No.2) and M/s. Trans Tour & Travels International Pvt. Ltd (petitioner No.3), have not been shown to be businesses of K.C. Jain and Sons, though Sh. Pawan Sagar Jain is the son of Sh. K.C.Jain. The presence of petitioners No. 2 & 3 in the demised premises is not in dispute. The petitioners set up their defence that the petitioner No. 1 was its agent and secondly, that the petitioner No.1 was carrying on its business from the premises and was thus in control of the premises. The burden lay squarely on the petitioners to prove their defence. Both the courts below have found that the petitioners have failed to prove their case.

22. The petitioners No.2 & 3, being distinct legal entities, even if the same person, namely, Pawan Sagar Jain, conducts their businesses, as he is doing so, on behalf of three separate legal entities, his commonality in the three petitioners/Companies will not be sufficient to disprove that the

premises from where admittedly the petitioners No.2 & 3 are functioning, have been sublet to them. Direct evidence to prove subletting will be well-nigh impossible for any landlord to obtain. Subletting, which furnishes a ground for eviction, has to be without the permission of the landlord and therefore, the terms of such subletting and the nature and mode of payment of rent, are facts that may not be within the knowledge of a landlord to enable him to prove them, but such inability cannot defeat the right of the landlord to seek eviction of the tenant, where subletting is established on the basis of surrounding circumstances.

23. In the light of the foregoing discussion, no merit is found in the present petition. The same is accordingly dismissed along with the pending applications. The eviction is upheld. The petitioners are directed to hand over the vacant peaceful possession of the subject premises viz. No. 10-B, Scindia House (bearing Municipal No. 13) Connaught Place, New Delhi, to the respondent No.1 within three months of the date of this judgment.

24. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 14, 2021
s